

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Atlantic Casualty Insurance
Company,

Plaintiff,

Case No. 1:22-cv-4546-MLB

v.

Sherry Phillips, et al.,

Defendants.

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ORDER

The Court held a hearing on Plaintiff's Motions to Compel Discovery and for Sanctions (Dkts. 55; 56) and the parties' Joint Statement Regarding Discovery Dispute (Dkt. 66) on July 18, 2023. Defendants William Roper and Sherry Phillips did not attend despite having been notified of the hearing and despite electing to represent themselves in this matter. (Dkts. 73, 75.) For the reasons stated on the record, the Court rules as follows:

1. The Court **GRANTS** Plaintiff's Motion to Compel Discovery Responses to Interrogatories (Dkt. 55) and Plaintiff's Motion to

Compel Discovery Responses to First Request for Production (Dkt. 56). The Court grants this relief for the reasons stated on the record, most importantly Mr. Ross's discussion of his process for responding to discovery requests by merely accepting what his clients say even if not responsive to the discovery requests. The Court **ORDERS** Defendants Roper and Phillips to provide full discovery responses **by August 4, 2023**. Those responses must include a plain statement as to the existence or nonexistence of documents and answers to the precise interrogatories propounded. The Court **DEFERS** ruling on Plaintiff's Motions for Rule 26 Sanctions (Dkts. 55; 56) against Mr. Ross.

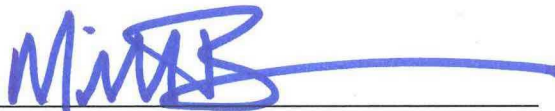
2. Having been presented evidence that Defendants William Roper and Sherry Phillips were aware of the need for them to attend their properly noticed depositions on May 22, 2023 (including as set forth in the parties' Joint Statement Regarding Discovery Dispute (Dkt. 66)) the Court **SANCTIONS** Defendants William Roper and Sherry Phillips pursuant to Fed. R. Civ. P. 37(d)(3) for their failure to appear

for those depositions.¹ The Court **ORDERS** Defendants Roper and Phillips to pay attorneys' fees to Plaintiff and Defendant Leonard Willis for their time spent on May 22, 2023 waiting for Defendants to arrive at the deposition, specifically attorneys' fees from the time the attorneys arrived at the location of the deposition until Defendants Roper and Phillips called to say they would not be attending. They must also pay Plaintiff any court reporter costs incurred that day. The Court further **ORDERS** Defendants Roper and Phillips to sit for their depositions **by August 4, 2023. Failure to comply with this order will place Defendants Phillips and Roper in contempt of Court and will result in further sanctions, including daily fines.** As discussed, Plaintiff and Defendant Willis may depose Defendants Roper and Phillips twice if needed to rectify the Defendants' insufficient discovery responses.

¹ Rule 37(d) provides "[t]he court ... may, on motion, order sanctions if ... a party ... fails, after being served with proper notice, to appear for that person's deposition." Fed. R. Civ. P. 37(d)(1)(A)(i). Sanctions may be imposed even in the absence of a prior court order compelling a party to attend a deposition. *Gonzalez v. Batmasian*, 319 F.R.D. 403, 404–05 (S.D. Fla. 2017). "However, failure to appear for a deposition is strictly construed and Rule 37(d) sanctions apply only when a deponent literally fails to show up for a deposition session." *Id.*

3. Plaintiff and Defendant Willis have scheduled Plaintiff's 30(b)(6) deposition for July 26, 2023 at 10:00 a.m. Defendants Phillips and Roper may attend that deposition, including to ask questions. **Failure to do so will constitute waiver of their right to depose Plaintiff's 30(b)(6) witness.** If Defendants Roper and Phillips wish to attend the deposition and discuss any topics beyond those in the notice of deposition, they must contact Plaintiff about those topics beforehand.
4. Defendants Phillips and Roper did not serve their Notice of Intent to Proceed Pro Se (Dkt. 73) on Plaintiff and Defendant Willis as required by Federal Rule of Civil Procedure 5. The Court **ORDERS** Defendants Phillips and Roper to serve any future papers on the other parties as required by Rule 5.
5. The Court **LIFTS THE STAY** on the pre-trial deadlines and **SETS** the following deadlines: discovery shall be completed by August 18, 2023; dispositive motions shall be filed by September 18, 2023; responses to dispositive motions shall be filed by October 18, 2023; and replies shall be filed by November 15, 2023.

SO ORDERED this 18th day of July, 2023.



MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE